Department of Justice

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JUSTICE DEPARTMENT FILES FIRST ANTITRUST SUIT AGAINST FOREIGN COMPANY SINCE 1992 POLICY CHANGE

WASHINGTON, D.C. -- The Justice Department acted today to break a licensing stranglehold on glass manufacturing that kept American companies from designing and building glass-making plants overseas.

A lawsuit and proposed consent decree involving a British company, Pilkington plc, and its U.S. subsidiary, is the first under a 1992 policy change that permits the Department to challenge foreign business conduct that harms U.S. export trade.

Pilkington, which dominates the world's $15 billion a year flat glass industry, was accused of closing off foreign markets to U.S. companies and costing Americans jobs by strictly limiting the use of commercial float glass technology, only a portion of which it developed and patented more than 30 years ago. Glass produced by this process is used in most of the world's cars and buildings.

The complaint asserted that even though Pilkington's patents expired long ago and the technology is now largely in the public domain, the company used its licensing arrangements to keep

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American glass producers from using the technology outside the U.S. and to restrain competition. It also stated that Pilkington, of St. Helen's, Merseyside, had intellectual property rights in the manufacturing technology that were of insufficient value to justify territorial allocations and other restraints of trade that limited the ability of U.S. firms to design, build or operate float glass plants in other countries.

The complaint also alleged that, by restricting the territory in which its licensees could use float glass technology, Pilkington reduced the potential reward that licensees could expect to reap from their own further innovations, thus reducing their incentive to invest in research and development projects that would benefit glass consumers.

In the past, the Justice Department asserted the power to bring antitrust suits against foreign companies whose conduct adversely affected U.S. domestic commerce and export trade. The Foreign Trade Antitrust Improvement Act of 1982 specifically applied to activities outside the United States.

However, in 1988, the so-called "footnote 159," enforcement policy was modified to prohibit challenges to anticompetitive conduct in foreign markets unless there was direct harm to U.S. consumers. The modification was withdrawn in 1992, and today's complaint and a proposed consent decree, filed in federal court in Tucson, Arizona, mark the first implementation of that reversal.

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Attorney General Janet Reno said, "This settlement will open new markets abroad for American businesses exporting high-tech services, and thereby create additional well paying jobs for highly skilled American workers and professionals here at home.

"It demonstrates the Department's determination to use its antitrust enforcement powers in appropriate circumstances to preserve the ability of American enterprises to compete on fair terms in international markets for U.S. export business," she added.

As a result of the proposed settlement, U.S. firms will be able to compete for the 50 new float glass plants expected to be built. This will result in an estimated increase in export revenues of between $150 million and $1.25 billion over the next six years, the Department said.

In the settlement, Pilkington agreed to end its restraints on U.S. companies, both in the U.S. and overseas, and to end its restraints on foreign companies who would sell the technology in the U.S. Pilkington also agreed not to engage in unlawful monopolistic conduct in the future.

The proposed consent decree also prohibits, except in specific narrow circumstances, Pilkington from asserting claims of proprietary rights to float glass technology against non-licensees that are domiciled or incorporated in the U.S.

Specifically exempted from the proposed consent decree's injunctive provisions is Pilkington's lawful use of any current

or future patent rights. Also, the company would not be prevented from asserting claims of confidentiality to specific float glass technology that qualifies under applicable law as trade secrets.

Robert E. Litan, Deputy Assistant Attorney General in the Antitrust Division, said, "The Division strongly supports intellectual property rights. Those rights can provide important incentives to innovate. We will not, however, turn a blind eye toward abusive intellectual property arrangements that reduce incentives to innovate."

The 1992 policy change came about after a Department review of antitrust enforcement policy on export restraints. The policy change superseded "footnote 159" in the Department's 1988 Antitrust Enforcement Guidelines for International Operations that said that the Department would pursue a policy of refraining from challenges to anticompetitive conduct in foreign markets unless there was direct harm to U.S. consumers regardless of the impact on U.S. export trade. The Department said in 1992, that it would return to enforcement policy that had been followed for many years prior to 1988.

The suit was handled by attorneys in the Antitrust Division's Professions and Intellectual Property Section and Division economists.

Float glass technology is used in manufacturing most of the world's flat glass. Annual domestic shipments of float glass,

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total approximately $3 billion. The world-wide annual total is about $15 billion. Flat glass is used mainly for windows and architectural panels by the construction industry, and for windshields and side and rear windows by the automobile industry.

As required by the Tunney Act, the proposed consent decree will be published in the Federal Register, together with the Department's competitive impact statement, and any person may comment on the proposed decree. Written comments may be submitted to Gail Kursh, Chief, Professions and Intellectual Property Section, Antitrust Division, U.S. Department of Justice, Room 9903, 555 Fourth Street, N.W., Washington, D.C. 20001 (202-307-5799).

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